

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TIMOTHY POWERS,

Plaintiff,

v.

ROMAN CATHOLIC DIOCESE OF ROCKVILLE
CENTRE, ST. MARTIN OF TOURS CHURCH and
ROBERT GUGLIELMONE,

Defendants.

ORDER

19-CV-4738 (MKB) (SMG)

MARGO K. BRODIE, United States District Judge:

Plaintiff Timothy Powers commenced the above-captioned action on August 14, 2019 in the New York Supreme Court, Nassau County, against the Roman Catholic Diocese of Rockville Centre (the “Diocese”), St. Martin of Tours Church (the “Church”), and Robert Guglielmone. (Notice of Removal, Docket Entry No. 1.) On August 16, 2019, Guglielmone removed this action to the Eastern District of New York based on diversity jurisdiction under 28 U.S.C. § 1332. (*Id.* at 1.) Plaintiff alleges that Guglielmone, the Church priest, sexually abused him as a child, and asserts state law claims of negligence, negligent hiring, retention and supervision, and negligent infliction of emotional distress against the Diocese and the Church, and assault and battery against Guglielmone. (Compl., Docket Entry No. 1-1.)

On April 17, 2020, Plaintiff moved to remand the action to state court, arguing that diversity jurisdiction was improper because Plaintiff is an American citizen domiciled outside of the United States of America. (Pl.’s Mot. to Remand (“Pl.’s Mot.”), Docket Entry No. 29; Pl.’s Mem. in Supp. of Pl.’s Mot., Docket Entry No. 29-1.) Guglielmone opposed the motion. (Guglielmone’s Mem. in Opp’n to Pl.’s Mot., Docket Entry No. 28.) By Order dated April 23,

2020, the Court referred the motion to Magistrate Judge Steven M. Gold for a report and recommendation. (Order dated Apr. 23, 2020.) By report and recommendation dated September 9, 2020, Judge Gold found that Plaintiff “has established by clear and convincing evidence that he is a foreign domiciliary and not a citizen of any state,” and recommended that the Court grant Plaintiff’s motions for remand (the “R&R”). (R&R, Docket Entry No. 32.)

No party has objected to the R&R and the time for doing so has expired.

A district court reviewing a magistrate judge’s recommended ruling “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “Where parties receive clear notice of the consequences, failure to timely object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.” *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P&C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002)); *see also Almonte v. Suffolk Cnty.*, 531 F. App’x 107, 109 (2d Cir. 2013) (“As a rule, a party’s failure to object to any purported error or omission in a magistrate judge’s report waives further judicial review of the point.” (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Sepe v. N.Y. State Ins. Fund*, 466 F. App’x 49, 50 (2d Cir. 2012) (“Failure to object to a magistrate judge’s report and recommendation within the prescribed time limit ‘may operate as a waiver of any further judicial review of the decision, as long as the parties receive clear notice of the consequences of their failure to object.’” (quoting *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997)) (citing *Arn*, 474 U.S. at 155)); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) (“[A] party waives appellate review of a decision in a magistrate judge’s [r]eport and [r]ecommendation if the party fails to file timely objections designating the particular issue.” (first citing *Cephas v. Nash*, 328

F.3d 98, 107 (2d Cir. 2003); and then citing *Mario v. P&C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002)).

The Court has reviewed the unopposed R&R and, finding no clear error, adopts the R&R pursuant to 28 U.S.C. § 636(b)(1). Accordingly, the Court grants the motion for remand and remands the case to the New York Supreme Court, Nassau County.

Dated: December 4, 2020
Brooklyn, New York

SO ORDERED:

s/ MKB
MARGO K. BRODIE
United States District Judge